REMARKS/ARGUMENTS

Favorable reconsideration of this application, as amended in light of the following remarks, is respectfully requested.

Claims 1, 3-13 and 15-24 are pending in this application. Claims 1, 3-5, 9, 11-12, 15-16, 18-19 and 21-24 are amended, support for which is found in the original claims, Fig. 1 and the specification at least at page 5, line 16. Claims 2, 14 and 25-29 are canceled without prejudice or disclaimer. Therefore, it is respectfully submitted that no new matter is added.

In the outstanding Office Action, the specification was objected to; Claims 5-7 and 26-28 were rejected under 35 U.S.C. §112, second paragraph; Claims 1-29 were rejected under 35 U.S.C. §101; Claims 1-20 and 22-29 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 6,529,506 (Yamamoto); and Claim 21 was rejected under 35 U.S.C. §103(a) as being unpatentable over Yamamoto in view of U.S. 6,446,037 (Fielder).

As noted above, Claims 25-29 are canceled without prejudice or disclaimer. Consequently, it is respectfully submitted that any objections to or rejections of Claims 25-29 are moot.

As to the objection to the specification and the rejection of Claims 5-7 under 35 U.S.C. §112, second paragraph, the Office Action states that a "picture repetition period" is not defined in the specification. Applicant respectfully disagrees.

The phrase "picture repetition period" is merely a generalized term for the terms "frame period," recited in Claim 6, and "field period," recited in Claim 7. Frame and field periods (i.e. picture repetition periods) are discussed in the specification at least at page 14, lines 15-29. Specifically, the specification recites:

> A frame synchronisation pulse received from the clock generator 100 causes the currently stored peak value to be output by the peak hold latch 130 and also resets the peak hold latch so that it acquires a new peak value in respect of the following frame period. So, the peak hold latch 130 outputs peak audio level values, once per frame period, in respect of the peak level during the

preceding frame period. The peak level values are passed to the packetiser 140.

Of course, other periods such as a field period or even a random or pseudo-random period may be used. A frame period is particularly useful as the data display at the received is generally updated at this rate.[1]

Therefore, it is respectfully submitted that the use of the term "picture repetition period" is supported in the specification. Accordingly, it is respectfully requested that the objection to the specification and the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

Moreover, the Office Action states that the "picture repetition period" applies to a "reproduction period." However, this term has not been defined in the Office Action. Based upon paragraph 40 of the Office Action, it appears the Office is referring to the 0.5 second time period described in column 33, line 23 of Yamamoto, which is a "reproduction time required for about 15 frames." Yamamoto is describing the use of time division multiplexing in MPEG-2 format for a single video object unit, which corresponds to the aforementioned time period for 15 frames (which under a 30 frame per second video corresponds to 0.5 seconds).[2]

On the other hand, the picture repetition period recited in Claims 5-7 is directed at a frame period (Claim 6) or a field period (Claim 7). For the sake of comparison with Yamamoto, in the aspect of 30 frame per second video, a frame period corresponds to about 0.033 seconds. Consequently, it is respectfully submitted that the correlation between "picture repetition period" and "reproduction period" made in paragraph 3 of the Office Action is improper.

Claims 1-29 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. These rejections are respectfully traversed for the following reasons.

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[1] Specification at page 14, lines 21-29.
[2] Yamamoto, column 33, lines 15-28.

The Office Action states that claims 1, 3-10, 17 and 18 are directed to a set of executable instructions which is software *per se*, citing that the attribute detector as defined in the specification generates an attribute of audio signals by executing a set of software instructions. However, amended independent Claim 1 and depending Claims 3-10, 17 and 18 are directed at a "network interface *device* connectable to a network ... the device comprising: an audio level detector having *a processor programmed to generate*, from audio properties of the digital audio data, *audio level data* representing an audio level of the audio signal."[3] Since Claim 1 is amended to recite, *inter alia*, a processor programmed to generate audio level data, it is respectfully submitted that the interpretation that Claims 1, 3-10, 17 and 18 are directed at software *per se* is overcome.

The Office Action also rejected Claims 11-16 under 35 U.S.C. §101 as being directed to a signal *per se*. However, independent Claim 11 and dependent Claims 12-13 and 15-16 are directed at a "*network destination device* connectable to a network ... the device comprising: *a user interface arranged to display a user indication* representing a current value of the audio level data." Since a signal cannot display a user indication, as recited in amended Claim 11, it is respectfully submitted that the interpretation that Claims 11-16 are directed at signal *per se* is overcome.

A similar rejection was made to Claims 22-24 with the Office Action stating that these claims are directed at a signal *per se* and software *per se*. However, independent Claim 22 recites a method which implements the use of a processor.

According to *In re Bilski*, the test for determining whether a method claim is eligible under 35 U.S.C. §101 is whether the claimed method is (1) tied to a particular machine or apparatus, or (2) transforms a particular article to a different state or thing.[4] It is respectfully

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[3] Claim 1 (emphasis added).
[4] *In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008).

submitted that amended Claim 22 and dependent Claims 23-24 are tied to a particular

machine or apparatus and transform a particular article to a different state or thing.

Therefore, it is respectfully submitted that the interpretation that Claims 22-24 are directed at

either a signal or software *per se* is overcome.

Consequently, it is respectfully submitted that the rejections under 35 U.S.C. §101

should be withdrawn.

Amended Claim 1 recites:

> A network interface device connectable to a network, the device being arranged to receive digital audio data representing an audio signal and to launch data packets representing the digital audio data onto the network, the device comprising:
> ***an audio level detector having a processor programmed to generate***, from audio properties of the digital audio data, ***audio level data*** representing an audio level of the audio signal; and
> a packetiser operable:
> to format the digital audio data into audio data packets to be launched onto the network, and
> ***to format the audio level data into audio level data packets, separate from the audio data packets, to be launched onto the network.***
> [Emphasis added].

Amended Claim 1 recites a detector having a processor programmed to generate audio

level data, and a packetiser operable to format the audio level into audio level data packets,

which are separate from the audio data packets, which are to be launched onto the network.

It is respectfully submitted that Yamamoto fails to disclose or suggest these features.

The Office Action states that Yamamoto describes generating attribute data

representing an attribute of the audio signal. However, Yamamoto does not generate audio

level data representing an audio level of an audio signal.

Yamamoto merely describes extracting, from a network signal, information-

embedded digital audio data and audio data attribute information.[5] The audio data attribute

information is control data defining a process which has been applied to/which should be

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[5] Yamamoto, column 24, lines 12-17.

applied to the digital audio data (such as a watermarking process).[6] In other words, received attribute data is decoupled from a received signal, which is a combination of attribute data and audio data.

Yamamoto fails to teach or suggest that the attribute data is generated from *audio properties of the digital audio data*, as defined in amended Claim 1. In contrast to amended Claim 1, Yamamoto states that the attribute data is *merely separated* from a composite signal, which includes audio data and attribute data. The attribute data in Yamamoto is not generated from audio properties of the audio data.

The Office Action further states that Yamamoto teaches a device in which the attribute represents a level of audio signal, citing to Figs. 10 and 23. Applicant respectfully disagrees. The Office Action states that Da, Db and Dc represent different levels of audio based on methods A, B and C.

The methods A, B and C indicate different methods of watermarking.[7] The first and second bits of Fig. 10 do not represent audio levels. The two bits shown in Fig. 10 allow for a counting number of 0 to 3 to be used to specify any one of four different watermarking methods. Moreover, it appears as though Yamamoto is entirely silent regarding audio levels or audio volume.

Therefore, it is respectfully submitted that Yamamoto fails to teach or suggest that the attribute data is audio level data representing an audio level of an audio signal.

Although directed at different statutory classes and/or varying in scope, it is respectfully submitted that Claims 19, 22 and 24 recite features substantially similar to those noted above in amended Claim 1. Accordingly, it is respectfully submitted that Claims 1, 19, 22 and 24 (and any claims depending therefrom) are allowable over Yamamoto.

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[6] Yamamoto, column 23, lines 1-11.
[7] Yamamoto, Fig. 10.

Moreover, amended Claim 3 recites:

> A device according to claim 1, being arranged to launch the audio data packets and the audio level data packets onto the network *as separate respective multicast groups*.
> [Emphasis added].

The Office Action states that <u>Yamamoto</u> describes "multicast groups" with reference to column 24, lines 12-24, which discusses the use of "multiple groups" based on various watermarking methods. However, "multiple groups" are not defined in <u>Yamamoto</u>. Therefore, it is unclear how the "multiple groups" noted in the Office Action correspond to "multicast groups," as the term is understood in light of the specification.[8] Should the rejection of Claim 3 be maintained in a next Official Action, then clarification as to the rejection is required. Otherwise, withdrawal of the rejection of Claim 3 is respectfully requested.

Amended Claim 11 recites:

> A network destination device connectable to a network, the device being operable to receive audio data packets representing an audio signal and being operable to receive audio level data packets carrying audio level data representing an audio level of the audio signal, the device comprising:
> a user interface arranged to **display a user indication representing a current value of the audio level data**.
> [Emphasis Added].

The Office Action states that <u>Yamamoto</u> describes the above-emphasized feature of amended Claim 11. However, as noted above, it appears as though <u>Yamamoto</u> is entirely silent regarding audio levels or audio volume. Therefore, it is unclear how <u>Yamamoto</u> could teach or suggest providing a user indication representing a current value of the audio level data. An example of such indication in an aspect of the claimed invention is shown in Fig. 11.

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[8] Specification at paragraphs [0039] and [0075] of this application as published.

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Although directed at different statutory classes and/or varying in scope, it is respectfully submitted that Claim 23 recites features substantially similar to those noted above in amended Claim 11. Accordingly, it is respectfully submitted that Claims 11 and 23 (and any claims depending therefrom) are allowable over Yamamoto.

Consequently, in light of the above comments, it is respectfully submitted that the pending claims are in condition for allowance. An early and favorable action to that effect is respectfully requested.
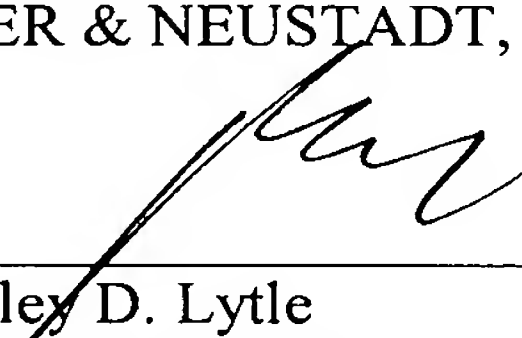
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